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## Notice and Public Participation

### Notice of Intended Action

The rulemaking process begins with the publication of a notice of intended action in the Iowa Administrative Bulletin (IAB). The notice includes the proposed rule changes. Agencies are required to submit their proposed rules for publication in the IAB, but may also to use more extensive notice if they choose. Notice must be published in the IAB at least 35 days before the proposed rules are adopted in final form. Noticed rules are subject to preclearance by the Governor's office prior to publication in the IAB.

### Scope of Rule Changes

The scope of rule changes in a notice is set by the agency. A notice can address one or more rules or portions of rules. A notice can add new rules, amend existing rules, delete existing rules, or a combination thereof. A notice is not restricted to one particular rule or issue, so a single rulemaking can embrace a large number of related or even unrelated changes.

### Preamble

Before the text of the rule changes, the notice contains a preamble, which includes a summary of the subject matter and a citation to the specific statutory authority for the proposal. The summary should include at least a brief explanation of the principal reasons for the rulemaking and the effects of the rulemaking. The preamble also contains standard language as to the availability of a public hearing, the time and method for the submission of written comments, review by the Administrative Rules Review Committee (ARRC), and other matters. An agency may use the preamble as a mechanism to present more detailed information on the reasoning behind the proposal or to describe its history.

### Written Comments and Opportunity for Oral Presentation (Public Hearing)

The public must be allowed not less than a 20-day period to submit written comments on the notice to the agency. The method and deadlines for these submissions are set out in the notice.

The notice must also identify the mechanism for requesting an "opportunity for oral presentation," informally known as a public hearing, if one is not already scheduled. This opportunity is only a right to express views and make arguments to a representative of the agency. This phrase was chosen to ensure there is no confusion with a trial-type hearing at which due process rights are at stake. The representative of the agency is not obligated to respond to the comments, only to receive them. Notice of the hearing must be published in the IAB at least 20 days in advance and is typically included in the notice of intended action. An agency may choose to schedule multiple public hearings on a notice.

Public participation in a public hearing is open to any "interested person," meaning literally anybody. This phrase includes individuals, corporations, associations, or any other entity. A particular legal interest is not required; anybody is entitled to offer comment on a proposed rule

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without regard to the nature of their interest. Once an oral presentation is scheduled, anyone is entitled to attend and speak. Participation is not limited to the persons or groups who make the initial request. Most agencies have adopted rules describing how they will conduct public hearings.

Unlike written submissions, a public hearing is not an automatic right. An agency can schedule a public hearing of its own volition, but only a limited number of persons can demand that a hearing be held if an agency does not initially choose to do so: the ARRC, 25 persons, a group representing 25 persons, a governmental subdivision, or an agency.

Availability of a public hearing is limited because a hearing can be time consuming for the agency. This process eliminates the ability for any single individual to disrupt the rulemaking process. When the agency does not schedule a hearing in the initial notice, a subsequent request delays the entire rulemaking process, as notice must still be given in the IAB at least 20 days in advance. For this reason, agencies should routinely schedule a public hearing as part of any rulemaking that might be controversial to avoid such a delay.

## **Agency Consideration of Comments**

Agencies are required to “consider fully” all written and oral comments received. Agency policy makers are not required to be present at the public hearing and do not need to read all written public comments, but they must be fully and adequately informed as to the content. This can be accomplished through an adequately prepared staff synopsis of the public comments. A verbatim transcript is not required for the public hearing; notes or a recording are sufficient.

While an agency is required to fully consider the public comments, it remains free to use its expertise to adopt whatever rule it feels appropriate, within the bounds of the agency’s statutory authority and any other legal requirements. Any changes urged in the public comments need not be carried out in the adopted rules, so long as they are considered.

## **Record of Rulemaking Proceeding**

Iowa law does not require the decision to adopt a rule to be supported by testimony and other evidence in a record. An agency is free to obtain information from any source it wishes, and its ultimate decision need not be based on, or supported by, materials or comments submitted by the public. A rulemaking record is the collection of written and oral comments and other materials as required in the Uniform Rules on Agency Procedure, which have been adopted by nearly every agency. A rulemaking record must generally be retained for a period of time set out in agency rules to allow for public inspection.

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